

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, ex rel,)
W.A. DREW EDMONDSON, in his)
capacity as ATTORNEY GENERAL)
OF THE STATE OF OKLAHOMA,)
et al.)
Plaintiffs,)
V.) No. 05-CV-329-GKF-PJC
TYSON FOODS, INC., et al.,)
Defendants.)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

HAD ON AUGUST 13, 2009

MOTION HEARING

BEFORE THE HONORABLE GREGORY K. FRIZZELL, Judge

APPEARANCES:

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PROCEEDINGS

August 13, 2009

THE COURT: Be seated please. I believe Mr. Jorgensen asked for an additional few minutes as to McGuire, then we need to begin with Sullivan, we'll then rule on this group of experts, McGuire, Sullivan and Taef. I do want to touch upon

1 true or not. I'll accept that as true and let's just move on.

2 As to these three motions, I'm going to try to draw
3 fairly clear lines here. Although questions and serious
4 questions have been raised here by both sides relative to the
5 weight that ought to be given to some of these experts and
6 serious questions have been raised here, it seems to me that's
7 exactly what we have. With regard to Dr. Taef, obviously to
8 the extent that Taef originally intended to rely on Harwood's
9 biomarker theory and/or Olsen's PCA theory and conclusions, he
10 will not be permitted to do that at trial, and to the extent
11 that he relies on those theories in summary judgment, the Court
12 will disregard that. I don't know to the extent those theories
13 are crucial, except my recollection here on the record is that
14 Mr. Bullock has stated clearly that Taef is not the plaintiffs'
15 witness regarding causation and I think that simply settles the
16 matter; correct, Mr. Bullock?

17 MR. BULLOCK: Well, I stated the one issue in terms of
18 causation and we're talking really the transport part of the
19 causation, that he did do a TMDL on bacteria and that has not
20 been attacked.

21 THE COURT: Correct. Correct. I was going to
22 elaborate, but for the TMDL matter. But it seems to me that
23 Dr. Taef is qualified to testify as an expert. We will not
24 consider any reliance on Harwood and Olsen, but the motion to
25 exclude his testimony will be granted in part only as to

1 What motion would you like to present? I don't care,
2 either side, would either side like to present next.

3 MR. JORGENSEN: Your Honor, we don't have any
4 particular preference but the next in sequence of file is 2033.

5 THE COURT: All right. Give me a second here because
6 I don't have the materials in front of me on that particular
7 motion. We'll take a short recess.

8 (Recess.)

9 THE COURT: Be seated please. Thank you for
10 accommodating the Court. We'll address motion number 2050.
11 And if it makes sense we'll hear that portion of plaintiffs'
12 motion that relates to RCRA as well. I don't know if that
13 makes sense. Good afternoon.

14 MR. TODD: Good afternoon, Your Honor. Gordon Todd
15 for the Tyson defendants. Your Honor, let me start with a
16 couple of housekeeping matters which I think will narrow our
17 focus and move us along today. The first would be with regard
18 to the third point we made in the RCRA motion dealt with the
19 endangerment as to health case.

20 THE COURT: Yes.

21 MR. TODD: And in light of the Court's ruling as to
22 Dr. Taef, it's clear that his testimony regarding disinfection
23 by-products and blue green algae will come in. And so the
24 other part of that motion had to do with bacteria, and we
25 believe that there's an issue there as to whether that's proper

1 at trial, but we filed the motion in limine to deal with that
2 across the entire case, and we're happy with dealing with that
3 there, so I'm not going to push, I'm not going to press that
4 portion of the motion, Your Honor.

5 THE COURT: Am I right in understanding, and if I'm
6 not that's fine, that the main issue here is whether poultry
7 litter is a solid waste under RCRA.

8 MR. TODD: That's exactly right, Your Honor, and
9 that's what I plan on focusing on almost exclusively.

10 THE COURT: All right.

11 MR. TODD: Before I get there though, the second
12 housekeeping matter just has to deal with going back to the
13 complaint the plaintiffs pled under RCRA that there was both a
14 hazardous waste and a solid waste at issue and they dropped the
15 hazardous waste claim. They did that at the PI hearing and
16 we've pointed that out a few times that they've never
17 resurrected that claim and so we believe that partial summary
18 judgment is appropriate as to that claim in the complaint.
19 With those two points out of the way, Your Honor --

20 THE COURT: Well now, is the hazardous waste claim
21 still extant such that partial summary judgment is even
22 appropriate?

23 MR. TODD: It hasn't been formally withdrawn so it's
24 still in the complaint.

25 THE COURT: Has it not?